

**ORIGINAL****RECEIVED****JUN 16 1998**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )  
 )  
 )  
Biennial Regulatory Review-Amendment of )  
Parts 0, 1, 13, 22, 24, 27, 80, 87, 90, 95, 97, ) WT Docket No. 98-20  
and 101 of the Commission's Rules To )  
Facilitate the Development and Use of the )  
Universal Licensing System in the Wireless )  
Telecommunications Services ) FCC 98-25  
 )  
Notice of Proposed Rulemaking )

To: The Commission

**TABLE OF CONTENTS OF REPLY COMMENTS OF  
THE FEDERAL COMMUNICATIONS BAR ASSOCIATION**

Introduction and Summary.....	2
I. The Transition Period To Electronic Filing Proposed In The NPRM Is Insufficient.....	3
II. Significant Technical Complexities Associated With The ULS Require Further Commission Consideration.....	6
A. The Commission Must Afford Licensees Significant Time To Review And Correct Existing Database Records.....	6
B. Grace Period Relief Should Be Afforded For ULS Users Experiencing Technical Failure.....	8
C. The Commission Should Make The ULS Compatible With Additional Operating Systems.....	8

0210

D.	The Commission Should Allow World Wide Web Access To The ULS.....	9
E.	The Commission Should Revise Its Proposed ULS Application Review Charges.....	10
F.	The Commission Must Provide ULS Batch Filing information.....	11
G.	Additional ULS Security Measures Should Be Considered.....	12
H.	All Wireless Map Filing Requirements Should Be Eliminated To The Extent That The ULS Is Equipped To Generate Such Maps.....	13
I.	The ULS Should Be Programmed To Include Docket Histories.....	14
III.	The FCC Should Not Require The Mandatory Electronic Filing Of Pleadings and Should Not Disallow Letter Filings.....	14
IV.	The Commission's Proposed Standards For Defining Major and Minor Amendments and Notifications Should Be Modified To Reflect The Distinctive Qualities Of Different Services.....	16
V.	The FCBA Reiterates Is Opposition To The Overbroad Information Collection Requirements Imposed By Proposed Form 602.....	18
VI.	The FCBA Supports Post Consummation Notification Of An Assignment Or Transfer.....	22
	Conclusion.....	24

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Biennial Regulatory Review-Amendment of	)	
Parts 0, 1, 13, 22, 24, 27, 80, 87, 90, 95, 97,	)	WT Docket No. 98-20
and 101 of the Commission's Rules To	)	
Facilitate the Development and Use of the	)	
Universal Licensing System in the Wireless	)	
Telecommunications Services	)	FCC 98-25
	)	
Notice of Proposed Rulemaking	)	

To: The Commission

**REPLY COMMENTS OF THE FEDERAL  
COMMUNICATIONS BAR ASSOCIATION**

The Federal Communications Bar Association ("FCBA")<sup>1</sup> hereby files its Reply Comments in response to the various comments filed on the Notice of Proposed Rulemaking

---

<sup>1</sup> The FCBA is a non-profit, non-stock corporation organized under the laws of the District of Columbia and has been in existence since 1936. The FCBA's membership consists of over 3,100 attorneys and other professionals involved in the development, interpretation and practice of communications law and policy. These Reply Comments were prepared by a task force under the direction of the FCBA's Wireless Telecommunications Practice Committee and approved by the FCBA's Executive Committee, its elected board of directors. As in the case of other comments filed on behalf of the FCBA, the views expressed in these Reply Comments do not necessarily reflect the views of each and every FCBA member. No FCBA members who are employees of the FCC participated in the preparation of these Comments. In addition, one member of the Executive Committee, who is an employee of the FCC, did not participate in the Committee's discussion or consideration of these Reply Comments or in any vote to authorize their filing.

("NPRM") in the above-captioned proceeding.<sup>2</sup>

### **Introduction and Summary**

In these Reply Comments, the FCBA reiterates its support for a one-year to two-year transition period prior to the inception of the proposed Universal Licensing System ("ULS") during which electronic filing would be possible, but not mandatory, in order to allow a reasonable time for the FCC to work out the inevitable difficulties in shifting to the new electronic filing system. The FCBA points out that there are significant technical complexities associated with ULS, which necessitate the longer transition period and require that certain additional actions be taken by the FCC. For example, the FCC should: (1) grant licensees significant additional time to review and correct FCC database records; (2) grant electronic filers a "grace period" to account for unforeseen technical failures; (3) make the ULS compatible with additional operating systems and with Worldwide Web access; (4) clarify its "batch filing policies;" (5) consider additional ULS security measures; (6) reconsider the level of proposed "application review" access charges; and (7) revise its map filing requirements to eliminate such requirements if the ULS can generate such maps. The ULS also should be programmed to include "docket histories."

The FCBA also further supports its positions that:

---

<sup>2</sup> *Biennial Regulatory Review - Amendment of Parts 9, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of Universal Licensing System in the Wireless Telecommunications Services*, WT Docket No. 98-20, FCC 98-25, Notice of Proposed Rulemaking.

(1) even in an electronic filing environment the FCC should continue to permit letter filings. Even if the FCC adopts mandatory electronic filing of applications, the public interest requires the preservation of the flexibility given by paper filings and letter requests in lieu of pleadings.

(2) the Commission's proposed standards for defining major and minor amendments should be modified to reflect the distinctive requirements of different radio services. Uniformity should not be attained at the price of transforming minor modifications into major modifications, thus imposing new substantive regulatory requirements on licensees and additional work on the FCC staff.

(3) the FCC's proposed information collection requirements in proposed Form 602 are overbroad, very burdensome, and unnecessary.

(4) licensees should be required to advise the FCC when they have completed a transfer or assignment.

**I. The Transition Period To Electronic Filing Proposed In The NPRM Is Insufficient.**

In its comments, the FCBA argued that the FCC's proposal to require electronic filing by January 1, 1999 was unrealistic in light of the very considerable technical, logistical and other problems which will be inevitable in shifting to an entirely new and untested method of processing applications electronically. The FCBA argued for a 1-2 year transition period during which electronic

application filing would be possible, but not mandatory, for applicants and licensees in order to allow the FCC and its licensees ample time to work out the difficulties, both foreseen and unforeseen, in the new system.

The FCBA's position is echoed in the overwhelming majority of comments which focused on the "transition" issue. In fact, many of those commenters go further than the FCBA, endorsing a transition period of indefinite length or supporting a permanent right to make paper filings.<sup>3</sup> The reasons given by the commenters in support of a longer transition period than the one contemplated in the NPRM are various and persuasive.

First, thousands of private and common carrier wireless licensees, many of whom do not generally follow FCC developments, will have to become aware of the proposed change in licensing procedures and will then have to secure the computer capability to comply with the new requirements. Assuming the new rules will be adopted in autumn of 1998, licensees would have approximately three months from the adoption of the rules to make the transition. This is simply too short a time to accomplish what is contemplated.<sup>4</sup>

---

<sup>3</sup> See, e.g., Comments of Nextel Communications, Inc. ("Nextel"), at 3-4; BellSouth Corporation ("BellSouth"), at 7-9; American Automobile Association ("AAA"), at 2-4; Century Telephone Enterprises, Inc. ("Century"), at 2-4; Bell Atlantic Mobile, Inc. ("BAM"), at 6-8; Personal Communications Industry Association ("PCIA"), at 3-5; Bennet & Bennet, at 4; Small Business in Telecommunications ("SBT"), at 2-4; American Radio Relay League ("ARRL"), at 17-18; American Mobile Telecommunications Association, Inc. ("AMTA"), at 2-4; Forest Industries Telecommunications ("FIT"), at 10; ADT Security Services, Inc. ("ADT Security"), at 2-4; AirTouch Communications ("AirTouch"), at 3-4; Radiofone, Inc. ("Radiofone"), at 2-4; TIA Fixed Point To Point Communications Section ("TIA"), at 8; and UTC, at 2-3.

<sup>4</sup> See, e.g., UTC, The Telecommunications Association ("UTC"), at 2-5; TIA at 8.

Second, there have been considerable problems, including system outages and incompatibility between FCC computers and those of licensees, in prior implementation phases of electronic filing. This was the case in the 800 MHZ SMR and LMRS auctions as well as in the antenna tower registration process. There are certainly grounds to fear that these problems could be multiplied exponentially if the ULS is made universal and mandatory for all wireless licensees on January 1, 1999.<sup>5</sup>

Third, licensees holding substantial numbers of licenses will have to undertake substantial internal personnel reorganizations to accommodate the new system and evidently will have to reconfigure their local area networks to create dedicated facilities to make FCC filings.<sup>6</sup> These processes will take time that a January, 1999 deadline will not afford. Fourth, a transition that is scheduled for too short a period would discriminate against small business licensees, rural licensees and minority licensees who may presently not have advanced computer capabilities and Internet access but still are providing good service in accordance with their licenses.<sup>7</sup>

Fifth and finally, the mandatory implementation of electronic filing on January 1, 1999 would be a risky and totally unnecessary leap in the dark. Virtually no licensees have clamored for this step to be taken at all and certainly not within these time frames. By proceeding more cautiously,

---

<sup>5</sup> See, e.g., Radiofone, at 2-4; PCIA, at 4-5.

<sup>6</sup> See, e.g., AirTouch, at 3-4; ADT Security, at 2-4.

<sup>7</sup> See, e.g., SBT, at 2-3; ARRL, at 17-18.

the Commission would accumulate actual experience with the electronic filing of wireless applications before making it mandatory. The Commission thus should postpone the proposed January 1, 1999 deadline for some reasonable time.

## **II. Significant Technical Complexities Associated With the ULS Require Further Commission Consideration.**

As the FCBA indicated in its Comments, the NPRM proposes nothing less than a sweeping transformation of the Commission's entire wireless application preparation, submission and processing regime.<sup>8</sup> Given the magnitude of this change, the FCBA reiterates the need for the Commission to move slowly, affording applicants, licensees, and the FCC itself sufficient time and flexibility to adapt to the new electronic filing procedures envisioned by the ULS. This is particularly important given the significant, and in many respects unknown, technical difficulties that users of the ULS are likely to encounter.<sup>9</sup> Toward this end, the FCBA supports a number of proposals made by commenters which it believes will help facilitate the transition to electronic filing.

### **A. The Commission Must Afford Licensees Significant Time to Review and Correct Existing Database Records.**

As indicated in the NPRM, implementation of the ULS will involve the consolidation of the Commission's various existing databases into a single, unified technological platform for all of the

---

<sup>8</sup> FCBA, at 10.

<sup>9</sup> AAA, at 2-3; Century, at 2. See also Caron Carlson, *Computer Glitches Plague Filings*, WIRELESS WEEK, June 8, 1998, at 53.



wireless radio services. It is hoped that this new, unified information resource will greatly improve application processing efficiency and record keeping accuracy. Nevertheless, notwithstanding its apparent technological sophistication, the ULS will be powerless to identify and correct all of the erroneous information that has understandably worked its way into the Commission's database records. Accordingly, an important factor determining the ultimate success of the ULS as an improved information processing tool will be the procedures adopted by the Commission at the outset for allowing licensees to review, proof and correct errant database information — particularly those existing database records which will be used to initially populate the ULS.<sup>10</sup>

While the FCBA applauds the Commission's recent efforts to afford cellular and paging licensees such an opportunity, the FCBA is concerned that the thirty-day database review and correction windows that the Commission has allowed these services are not sufficient for all licensees. At a minimum, the Commission should allow licensees two or three months to complete their review of database records. Further, the FCBA urges the Commission to afford applicants and licensees an ongoing opportunity to correct errant information contained in the Commission's existing database records. Inasmuch as some errors will undoubtedly not be detected until after such windows close, so long as applicants and licensees can provide adequate documentation justifying a correction in the Commission's database, and so long as no other party would be prejudiced by such a correction, the FCBA submits that applicant and licensee requests for corrections to errant database information should not be limited to filing windows.

---

<sup>10</sup> AirTouch, at 3; FCBA, at 10-11; WinStar Communications, Inc. ("WinStar") at 2-3.

**B. Grace Period Relief Should Be Afforded for ULS Users Experiencing Technical Failure.**

In addition to extending the planned ULS transition date (as well as continuing to allow permissive paper filings), the FCBA supports the proposal of the American Petroleum Institute ("API") that the Commission provide a 24-hour grace period for applicants experiencing technical difficulties with electronic filing.<sup>11</sup> To prevent abuses, the FCBA further supports API's proposal to require parties requesting such a grace period relief to submit a detailed, sworn statement specifying the nature of the technical difficulties that prevented filing. As every experienced computer user can attest, it is often impossible to fully anticipate the technical problems that will result with the utilization of new software applications; indeed, it is typically not until deadlines are imminent that the most troublesome technical problems are presented. Moreover, given the fact that the ULS will need to be integrated with myriad computer and peripheral configurations around the country, such problems are inevitable. Accordingly, the FCBA supports API's grace period proposal, believing it will allow a flexible accommodation for users experiencing unforeseen technical difficulties during the Commission's transition to electronic filing.

**C. The Commission Should Make the ULS Compatible With Additional Operating Systems.**

Another of the factors determining the ultimate, long term success of the ULS is the extent to which the Commission is committed to supporting the various operating system software

---

<sup>11</sup> API, at 5-6.

in use by ULS users, both now and in the future. While it is certainly true that many ULS users will employ computer systems that operate in Windows 3.1 or 95 environments (which the ULS currently supports), the FCBA agrees with those commenters who have called for the Commission to support Windows NT, Windows 98, as well as other widely available operating systems such as DOS and Macintosh.<sup>12</sup> Doing so, the FCBA believes, will prove particularly useful for non-profit, and other non-commercial future ULS users who, while having access to the Internet, might not have access to a computer configured with a Windows 3.1 or 95-based operating system.

**D. The Commission Should Allow World Wide Web Access to the ULS.**

The Commission has obviously expended considerable time and resources designing the ULS to work in conjunction with Internet web browser technology. As the FCBA indicated in its comments, web browsers are widely available, are familiar to users, and are technically supported by systems personnel and vendors.<sup>13</sup> Indeed UTC notes in its Comments that "Internet access is becoming pervasive throughout the country, and offers an inexpensive and easy method for accessing databases and transmitting information."<sup>14</sup> Given the obvious advantages associated with web browsers, moreover, the FCBA again urges the Commission to allow access to the ULS by means of a World Wide Web connection in addition to the point-to-point protocol ("PPP") proposed in the NPRM.

---

<sup>12</sup> AAA, at 3; ADT Security, at 3; Alarm Industry Communications Committee ("Alarm Industry"), at 3; BellSouth, at 6-7; FIT, at 6; SBC Communications, Inc. ("SBC"), at 8; TIA, at 6-7.

<sup>13</sup> FCBA, at 11-12.

<sup>14</sup> UTC, at 4.

While the FCBA acknowledges that PPP circuit-based connections offer a certain measure of security and enhance interoperability over a multi-vendor infrastructure, it is equally clear that packet-switched web connections using web browser encryption technology offer equal (and indeed, perhaps even superior) security and interoperability capabilities.<sup>15</sup> As UTC notes, “[t]o the extent security of [the] ULS is a concern, it is difficult to believe that the nature of the information available through the ULS would require use of a dedicated network, and that adequate protection could not be provided using traditional means of e-commerce security.”<sup>16</sup> In addition, web-based connections avoid many of the software conflicts and technical complexities experienced by users of PPP-based applications — particularly those associated with operation of PPP-based applications on an office network/LAN.<sup>17</sup> In sum, making the ULS accessible by means of the World Wide Web will enhance its overall flexibility and user-friendliness without compromising data security.

**E. The Commission Should Revise its Proposed ULS Application Review Access Charges.**

The Commission is proposing to charge \$2.30 a minute for users accessing the application review features of the ULS.<sup>18</sup> As the FCBA noted in its Comments, agency personnel

---

<sup>15</sup> BellSouth, at 5-6; FCBA, at 11-12, FIT, at 7; TIA, at 7.

<sup>16</sup> UTC, at 4.

<sup>17</sup> Id.; See also, AAA, at 3-4; Alarm Industry, at 3-4.

<sup>18</sup> NPRM at n.4.

informally indicated at recent public ULS demonstrations that the Commission likely will reduce this access charge in the near future as it reassesses the actual ULS design, development and operational costs that this access charge is intended to defray. In the meantime, however, the FCBA agrees with other commenters that the charge is too high and that the Commission should publicly disclose the methodology it employed to calculate its cost recovery requirements.<sup>19</sup> Further, the FCBA reiterates its position that the Commission should consider making the application review portion of the ULS accessible by means of flat-rate, monthly pricing, and that the Commission should devise a means for users to pay by credit card or to be billed; toward this end, the FCBA notes that each of these features could easily be accommodated by allowing World Wide Web access to the application review portion of the ULS in addition to the toll line, dial-up access contemplated by the NPRM.<sup>20</sup>

**F. The Commission Must Provide ULS Batch Filing Information.**

Based on the Commission's largely successful experiences with batch filings, the FCBA is certain that many applicants and licensees will undoubtedly take advantage of the ULS batch (or flat) filing option proposed in the NPRM.<sup>21</sup> Batch filing allows applicants to submit information directly into the Commission's databases without the need for interactive application forms, and is consistent with the Commission's efforts in this proceeding to eliminate unnecessary filing and regulatory burdens. Nevertheless, in order to implement the necessary systems configurations to

---

<sup>19</sup> BAM, at 8; Bennet and Bennet, at 5; SBT, at 5; UTC, at 2-3.

<sup>20</sup> FCBA, at 13-14.

<sup>21</sup> AirTouch, at 4; BAM, at 7; FCBA, at 16-17; W5YI Group, Inc. ("W5YI"), at 15-16.

make optimum use of the ULS batch filing option, the FCBA reiterates its request that the Commission release protocol and formatting information so that applicants and licensees will have sufficient time to design and implement all necessary system configurations before the ULS becomes operational. Furthermore, to the extent that the Commission is genuinely committed to supporting batch filing, the FCBA is hopeful that the Commission will not subsequently withdraw its support, particularly once applicants and licensees begin internally deploying batch filing system design configurations across their office networks.<sup>22</sup>

**G. Additional ULS Security Measures Should be Considered.**

In order to control and track access to the application preparation and submission portion of the ULS, especially in light of the proposed ULS electronic application signature procedure, commentators agree that the Commission should register, and assign passwords to, individual ULS users.<sup>23</sup> Doing so will allow applicants and their designated agents, engineers and attorneys to work together, from remote locations, on the preparation of ULS applications, while at

---

<sup>22</sup> The FCBA notes that the FCC recently announced its intention to discontinue the batch filing option for tower registrations because that option would no longer be needed after the June 30, 1998 closing of the registration filing window. See Wireless Telecommunications Bureau Announces Antenna Registration Software Compatible with Windows 95, Requires Registrations with New Software Beginning Tuesday, June 1; Flat File Format to be Eliminated, Public Notice (rel. May 29, 1998). Unfortunately, the FCC's decision to discontinue batch filing fails to account for the fact that some licensees have expended considerable efforts to virtually automate the registration process by fully integrating batch filing with their internal site database record-keeping procedures. For these licensees, who intended to continue utilizing the batch filing option for new structure registrations, the Commission's decision will have the unintended effect of arbitrarily increasing application preparation and submission burdens without justification.

<sup>23</sup> BellSouth, at 26-27; FCBA, at 14-15; SBT, at 23-24.

the same time allowing applicants to monitor and restrict access to authorized personnel.<sup>24</sup> In addition registering user names and passwords should be more than adequate to address the issue of fraudulent filings and unauthorized assignments of license raised by API; accordingly, the FCBA opposes API's proposal to require counterpart ULS assignment of license applications.<sup>25</sup>

The FCBA notes that BellSouth concurs with the FCBA that the Commission must prevent access to draft applications stored in the ULS.<sup>26</sup> As BellSouth indicates, access to draft applications prior to filing by any unauthorized party could potentially result in the release of highly confidential business information such as proposed mergers or acquisitions involving publicly-traded corporations.<sup>27</sup> Accordingly, the FCBA supports BellSouth's proposal to encrypt draft application information in the ULS database, without any "backdoors," so that such information would be entirely secure from unauthorized access (*e.g.*, by competitors, FCC personnel, stock manipulators, or hackers).<sup>28</sup>

**H. All Wireless Map Filing Requirements Should Be Eliminated to the Extent that the ULS is Equipped to Generate Such Maps.**

As AirTouch, BellSouth and the FCBA indicated in their Comments, it is unclear from

---

<sup>24</sup> BellSouth, at 26-27.

<sup>25</sup> API, at 4-5.

<sup>26</sup> BellSouth, at 9-10; FCBA, at 15-16.

<sup>27</sup> Id.

<sup>28</sup> BellSouth, at 10.

the NPRM the extent to which the Commission intends to maintain its current Part 22 map filing requirements.<sup>29</sup> Nevertheless, given the impressive map-generating capabilities of the ULS, the FCBA supports BellSouth's proposal to largely eliminate map filing requirements.<sup>30</sup> The FCBA proposes, moreover, that the Commission should only require maps to be filed in circumstances where the ULS is incapable of generating an appropriate map from the technical data supplied in the Form 601. Doing so will largely eliminate the burden of preparing, scanning and submitting maps to the Commission that are more efficiently generated by the ULS.

**I. The ULS Should Be Programmed To Include Docket Histories.**

As an additional suggestion to improve the efficiency of the ULS, the FCC should incorporate within it docket histories, by file number, which could be accessed electronically. Searches for information contained in docket histories are often time consuming and difficult. Including such in an electronically accessible database would be of great benefit to the public.

**III. The FCC Should Not Require The Mandatory Electronic Filing Of Pleadings And Should Not Disallow Letter Filings.**

The FCBA, in its comments, supported the NPRM's proposal, at ¶ 26, that applicants and others be allowed to file pleadings and informal requests electronically, provided the option was

---

<sup>29</sup> AirTouch, at 10; BellSouth, at 7; FCBA, at 21.

<sup>30</sup> BellSouth, at 7.



preserved for filing such pleadings and requests in paper form. The FCBA also opposed the FCC's proposal, NPRM, ¶ 27, that "letter request" filings be disallowed after January 1, 1999 in favor of electronically filed FCC forms. The FCBA's point was and remains that if it becomes more efficient and convenient for applicants to shift to electronically filed pleadings and to file forms in place of letter filings, they will do so, but that the decision should be made by applicants and other filers, not the FCC.

The FCBA believes that applicants and licensees should continue to be able to file pleadings and informal requests in paper form and to file letter requests in lieu of electronic forms because it considers that flexible approach to be in the best interest of FCC licensees and the public. Most of the commenting parties dealing with these issues agreed with the FCBA's position.<sup>31</sup> Their comments point out that pleadings, with their various "exhibits," are, by their nature, difficult to file in "electronic" form. "Scanning" exhibits requires "digital imaging" equipment, which many persons who wish to file pleadings in FCC proceedings may not have. Given the FCC's requirement of serving pleadings on all parties to a given proceeding, there will be no inconvenience to any party in an FCC proceeding to continue the present policy.

The only factor militating in favor of a ban on the paper filing of pleadings and a ban on all letter requests is the FCC's evident wish to create a paperless environment in which essentially all communications between it and its wireless licensees will take place within the confines of five

---

<sup>31</sup> See, e.g., Radiofone, at 4; AAAssociation, at. 4-5; ADT Security, at 4-5; FIT, at. 10-11; Century, at 4-5.

approved forms. It is impossible for the FCBA to regard this constricted vision of the appropriate interaction between the agency and its licensees and the public as an improvement; rather it could prove contrary to the public interest. Modern computer technology should be used to facilitate and enhance public interaction with the Commission not restrict it. Elimination of paper filings will only make it more difficult for some to communicate with the FCC.

**IV. The Commission's Proposed Standards for Defining Major and Minor Amendments and Notifications Should Be Modified To Reflect The Distinctive Qualities of Different Services**

In its Comments, the FCBA acknowledged the Commission's desire to streamline its administrative procedures, and that this intention served as the basis for its proposal to create one set of universal standards for classifying major and minor filings applicable to all wireless radio services. FCBA, at 25. The FCBA noted, however, that the proposed rules had the apparently unintended and most certainly undesirable effect of requiring certain wireless carriers to obtain prior FCC authority for changes that are routine and presently are treated as "minor" under the Commission's Rules. Citing several examples, the FCBA urged the Commission to modify its proposed rules to make clear that changes in operations that are minor under present service specific rules will remain minor under the new rules. *Id.* at 27. The Commission in this proceeding intended to streamline its processes and certainly did not intend to increase the obligations of licensees and the work of the FCC staff.

In the Comments filed in this proceeding, commenters universally supported the FCBA's recommendation that the Commission should not extend the realm of major amendments

merely to establish uniformity for uniformity's sake.<sup>32</sup> Specifically, these commenters urged the Commission, as did the FCBA, to retain the "minor" change classification for current "minor" changes involving, among other things, (1) Federal Aviation Administration ("FAA") notification, (2) frequency additions or changes within assigned channel blocks, (3) very small changes or corrections in geographic coordinates; and (4) internal site changes of Part 22 licensees. The FCBA supports the retention in specific services of rules permitting minor changes where, given the FCC's allocation and rules for the service, interference within a service area is not at issue as the result of a change.

In each context, the FCBA was supported by other comments filed in this proceeding. First, the FCBA agrees with GTE, SBC, BAM, and BellSouth, among others, that the Commission should not alter its rules that permit "minor" changes even where these changes require FAA notification. As established by these commenters, where cellular and PCS licensees currently can provide service immediately after complying with appropriate FAA procedures, the Commission should not impose additional filing and approval requirements that serve no purpose, but delay the provision of service, merely to establish uniform filing rules.<sup>33</sup>

Second, the FCBA agrees with Airtouch, BellSouth, and SBC that additions or changes in frequencies where frequency blocks have been assigned on an exclusive basis should remain changes that can be accomplished with coordination and without FCC approval requiring

---

<sup>32</sup> See Nextel, at 5; BAM, at 9-10; FIT, at 12-13; Airtouch, at 6-9; SBC, at 9-14; BellSouth, at 11-14; GTE Service Corporation ("GTE"), at 2-6.

<sup>33</sup> See BellSouth, at 13-14; GTE at 4-11; SBC at 9; BAM at 9; FCBA at 25-26.

public notice.<sup>34</sup> As Airtouch has recognized, the Commission should clarify that frequency changes or additions within a licensee's exclusively authorized spectrum block do not constitute any type of amendment, major or minor.<sup>35</sup>

Third, the FCBA agrees that the Commission should not adopt Section 1.929(c)(3), as proposed, which would classify as "major" any change in latitude or longitude for cellular or paging stations.<sup>36</sup> If the Commission adopts any uniform rule on coordinate changes, it should permit some uniform "minor" correction or change in the coordinates that does not require a "major" amendment application. Moreover, as the FCBA recognized in its initial Comments, and is supported by Airtouch, licensees under Part 22 should not be required to file major modification applications unless a proposed location change would expand their authorized service areas.<sup>37</sup>

**V. The FCBA Reiterates Its Opposition to the Overbroad Information Collection Requirement, Imposed By Proposed FCC Form 602.**

In its Comments, the FCBA expressed its concern that the ownership information the FCC proposes to collect is overbroad and unduly burdensome.<sup>38</sup> Several other parties who filed comments in response to the NPRM also opposed the ownership information reporting requirements

---

<sup>34</sup> See Airtouch at 8; SBC at 10; BellSouth at 11-13

<sup>35</sup> AirTouch, at 8.

<sup>36</sup> See Airtouch at 6-7; FIT at 12-13.

<sup>37</sup> See Airtouch at 6-7; FCBA at 27.

<sup>38</sup> FCBA, at 28-32.

as far-reaching and unjustified.<sup>39</sup> Some of these commenters argue that the collection of Taxpayer Identification Numbers or Social Security Numbers (collectively "TINs") raises privacy issues, and that TINs should be collected only from applicants in instances where a refund is being issued.<sup>40</sup> These commenters correctly point out that TINs must be collected pursuant to the Debt Collection Improvement Act of 1996. Thus, TINs are relevant only in instances where licensees or applicants will receive government refunds. The FCBA agrees with the positions of those commenters and supports the limitation of TIN collection to (1) the TIN of the filer only; and (2) situations where the filer will receive a refund of moneys from the FCC.

The FCBA supports the positions taken with respect to collection of ownership information contained in the comments filed by BAM and AT&T Wireless Services, Inc. ("AT&T"). BAM accurately points out that the proposed rules would require licensees to update ownership information each time there is a change in information on file, even if the change has no effect on the control of the filer.<sup>41</sup> As BAM observes, this proposed requirement goes well beyond current rules, which require the filing of ownership reports with initial applications and upon changes of control. The FCBA agrees with BAM that the proposed obligation to continually update ownership information is unduly burdensome and that the FCC should maintain its current rules in this regard. BAM also correctly argues that the Form 602 is overbroad and onerous, and would result in the

---

<sup>39</sup> See BAM, AT&T Wireless Services, Inc. (AT&T"), PCIA, UTC, Brown & Schwaninger, ARRL, BellSouth, API, FIT, Affiliated American Railroads, ADT Security, Alarm Industry, National Spectrum Managers Association, Bennet & Bennet, David Popkin, Century, and AAA.

<sup>40</sup> See Brown & Schwaninger, at 10-11; National Spectrum Managers at 11.

<sup>41</sup> BAM, at 10.

collection of information that is irrelevant to ownership. BAM suggests that information should be reported solely with respect to the licensee and the entity ultimately in control of the licensee.<sup>42</sup> The FCBA strongly supports BAM's position. As the FCBA argued in its comments, much of the information proposed to be collected by FCC Form 602, *e.g.*, with respect to holders of certain non-ownership or control interests and other FCC-regulated businesses in which they hold interests, is irrelevant to the ownership and control of the filer. Therefore, the information is irrelevant to the FCC's evaluation of an application.

AT&T also expresses its concern over the Commission's attempt to collect ownership information which is irrelevant to the evaluation of an application.<sup>43</sup> AT&T argues that the Commission should collect information only relating to "officers and directors, attributable shareholders, and key management personnel who are actively involved in the day to day operations of the filer."<sup>44</sup> While not identical to the proposals put forth by BAM or the FCBA, AT&T's proposal also properly recognizes that only certain types of interests in a filer are relevant and thus warrant scrutiny by the Commission. AT&T's proposal attempts to limit the scope of reported information to those persons or entities who have an opportunity to exercise control over the filer or its operations. AT&T argues further, as did the FCBA, that the Commission should not require licensees to report holders of 10% or more of each class of stock, warrants, options or debt securities, because such a collection of information is "unworkable" and "unlikely to produce meaningful

---

<sup>42</sup> BAM, at 12.

<sup>43</sup> AT&T, at 4.

<sup>44</sup> Id.

information for the Commission." AT&T suggests that information should be collected only with respect to holders of 10% or more of any class of securities with voting rights. Again, the AT&T proposal would limit reporting obligations to those with the potential to influence the filer or its operations. The FCBA supports AT&T's proposal. As noted in the FCBA's comments, debt securities, warrants and options are not evidences of current ownership or an ability to exercise control over a filer. Unless the characteristics of such securities change, *e.g.*, by the exercise of an option to purchase voting securities, these interests are irrelevant to the control of the filer and to the FCC's consideration of an application.

While certain of the Commission's rules relating to certain services currently may request the information proposed to be collected by FCC Form 602,<sup>45</sup> the FCBA respectfully submits that the reporting requirement is unduly burdensome, unnecessary to the Commission's evaluation of applications, and therefore not in the public interest. Pursuant to Section 11 of the Communications Act of 1934, as amended,<sup>46</sup> the FCBA urges the Commission to repeal those regulations. Section 11 requires the periodic review of existing regulations and the repeal of regulations which are deemed no longer necessary in the public interest. The subject rules are precisely the types of regulations Section 11 was intended to address. As discussed in detail in the FCBA's comments, proposed Form 602 (which purportedly is based upon those rules) is akin to a dragnet --- it will result in the collection of information that is unrelated to the ownership or control of the filer and therefore irrelevant to the Commission's evaluation and processing of the associated

---

<sup>45</sup> See, *e.g.*, 47 C.F.R. §§ 1.2112, 22.108.

<sup>46</sup> 47 U.S.C. § 161.

application. In addition, preparation of every form (based upon these rules) multiplies the burdens imposed a thousand-fold, requiring commitments of substantial human and financial resources which would far outweigh the potential benefits from the collection of the requested information. The combination of these two factors compels the conclusion that these obligations should be repealed pursuant to Section 11 of the Act.<sup>47</sup>

In sum, there is widespread concern relating to the scope of ownership information sought to be collected by the FCC in Form 602. As the FCBA and others point out, much of the information requested does not have any bearing upon ownership or control of the filer, is irrelevant to the FCC's licensing process, and would require the devotion of significant resources to collect. In light of the foregoing, the FCBA respectfully requests that the Commission modify proposed FCC Form 602 as described in the FCBA's comments.

#### **VI. The FCBA Supports Post Consummation Notification Of An Assignment Or Transfer.**

The FCBA, in its comments at 32, supported the NPRM's proposal at ¶ 66 that there be a post-consummation notification of an assignment or transfer prior to the FCC's changing its database to reflect a new licensee or a transfer of control. This position has been challenged by certain commenting parties.<sup>48</sup> They argue against having to notify the FCC of the consummation of

---

<sup>47</sup> If the Commission has particular concerns, *e.g.*, with compliance with anti-collusion rules during an auction, the Commission could require, in that limited instance, the reporting of additional ownership information. An across-the-board indiscriminating application of such requirement, however, is not necessary and not justified for this purpose.

<sup>48</sup> See, e.g., AirTouch, at 5-6; BellSouth, at 16-17.



non-*pro forma* transfers, along with opposing the NPRM's proposal (NPRM ¶ 62) that wireless licensees be required to certify that they have completed construction of certain authorized facilities or advise the FCC that they have not constructed authorized microwave facilities.

The FCBA took no position on the "certification of construction" issue but would state that there should be some mechanism by which licensees should notify the FCC that they have completed construction of either new facilities or facilities modifications for which they have had to seek prior FCC consent. If that is not the case, inaccuracies regarding whether such construction has taken place will inevitably creep into the ULS database.

With respect to transfers and assignments, the FCBA stands by its position and urges the Commission to adopt its proposed rule, Section 1.948(c). It would be a distinct improvement on the present situation, particularly with regard to common carrier microwave station assignments and transfers. At present, once a Part 101 microwave station assignment or transfer is granted, the FCC immediately "assigns" or "transfers" the station in its database, even if the actual assignment or transfer does not take place for months, if ever. This creates the situation of the FCC advising a licensee wishing to modify that facility in the interim that it cannot do so because the station now belongs to the proposed assignee/transferee. It is equally wrong to have to file a transfer or assignment application to "return" the license to a licensee who has never actually assigned or transferred it in the first place if the authorized transaction is not consummated.

By its present policy, the FCC has ensured that inaccurate data will be entered in its